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In The

Supreme Court of the United States

October Term, 1939.

No. 195

COMMERCIAL CASUALTY INSURANCE COMPANY,
a Foreign Corporation,
Petitioner and Appellant Below,

v.

MARJORIE W. STINSON,
Respondent and Appellee Below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

ROBERT E. PLUNKETT,
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To the Honorable Charles Evans Hughes, Chief Justice of the United States, and the Associate Justices of The Supreme Court of the United States:

Your petitioner respectfully shows:

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

(Figures in parentheses refer to pages of the printed record except as the context clearly indicates otherwise.)

Your petitioner caused its policy of accident insurance to be issued to one Clayton B. Stinson, respondent's deceased husband, insuring him against loss "resulting directly and independent of all other causes from accidental bodily injuries, fatal or non-fatal, * * *" (7).

On the afternoon of December 24th, 1936, the assured had been out for a Christmas celebration and returned home about 7:00 P. M. (31). After returning home he made calls on several neighbors and also ate part of his dinner (29). He then left his home, without his hat, and in his shirtsleeves to call on another neighbor who lived three houses away (29).

The respondent stepped to the front door of her home to call him back and saw him ringing the neighbor's door bell, and no one answering, he turned to leave and she saw him slip and "go over fast" (29). She put on a coat and ran to him in the neighbor's yard. She helped him up, to assist him home, but he ran across the street to another neighbor's house. When they opened their door, he fell in. He was disheveled and dead drunk (54-56). This neighbor helped the respondent assist him home. He was quarrelsome and in a fighting mood (57-58). After considerable struggling, a doctor was called, who found the assured drunk (61). The doctor tried to subdue him and after wrestling and struggling with him considerably, gave him three hypodermics over a period of about two and a half hours (59-61). On the doctor's recom-

mendation, the assured was removed to the Ford Hospital, just prior to midnight for acute alcoholism (62).

At the hospital the respondent, who accompanied the assured, gave a history that the assured had been out on Christmas parties all day and had come home intoxicated (76). Physical examination at the hospital showed the odor of alcohol on the assured's breath (78). The assured's blood pressure was very low, his respiration slow and his pulse very sluggish (77). Treatment was given, but at 7:30 A. M. the following morning, the assured suddenly went into a collapse and died (77). Immediately after his death his spinal fluid was examined and showed no blood (78).

An autopsy was performed on the body of the assured about three hours after his death by a county physician for the coroner's office, which showed the cause of death to be circulatory collapse and cerebral oedema (110). An analysis of the contents of the stomach by the coroner's office showed the presence of ethyl alcohol (109). The county physician who performed the autopsy gave his opinion that the alcoholic condition caused the assured's death (66). Two other doctors, testifying from pathological examinations and other data, corroborated the diagnosis of the county physician (74, 79). A second post mortem was performed six days later by a Dr. Owen at the request of the respondent. Dr. Owen testified that the assured died of injury to the brain and spinal cord, as evidenced by the hemorrhages in the brain tissues, caused both by alcohol and injury (47-48).

The respondent, the beneficiary in the policy, claims that the assured's death was under circumstances creating a liability under the policy, i. e., "resulted directly and independent of all other causes from accidental bodily injury." The cause was tried in the United States District Court for the Eastern District of Michigan and

resulted in a jury verdict and judgment for the respondent. Your petitioner appealed to the United States Circuit Court of Appeals, Sixth Circuit, where the judgment was affirmed by a divided court (129).

II.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

The decision of the said Circuit Court of Appeals as to the testimony presenting a question of fact for a jury by holding that the record disclosed such a question, is a decision of an important question of local law in a way probably in conflict with applicable local decisions.

Wherefore, your petitioner prays that a writ of certiorari issue under the seal of this court, directed to the United States Circuit Court of Appeals, Sixth Circuit, commanding said court to certify and send to this court a full and complete transcript of the record and of the proceedings of the said United States Circuit Court, Sixth Circuit, had in the case numbered and entitled on its docket No. 8420, Commercial Casualty Insurance Company, a foreign corporation, appellant, versus Marjorie W. Stinson, Appellee, to the end that this cause may be reviewed and determined by this court, as provided for by the Statutes of the United States; and that the judgment herein of said United States Circuit Court of Appeals for the Sixth Circuit be reversed by the court, and such further relief as to this court may seem proper.

COMMERCIAL CASUALTY
INSURANCE COMPANY,
By ROBERT E. PLUNKETT,
Counsel for Petitioner.

June 28th, 1940.